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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. FSIS-2019-0028]

RIN 0583-AD83

**Inspection of Yak and Other Bovidae, Cervidae, and Camelidae
Species**

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to define yak and include it among "exotic animals" eligible for voluntary inspection. This proposed change responds to a petition for rulemaking. It would officially allow yak products to be voluntarily inspected and to bear the USDA voluntary mark of inspection, benefitting the yak industry. FSIS is also requesting comments on whether all farmed-raised species in the biological families Bovidae, Cervidae, and Camelidae, if not already subject to mandatory inspection, should be eligible for voluntary inspection, and whether any species in these families should be added to the list of amenable species requiring mandatory inspection. FSIS already requires mandatory inspection for several species of the Family Bovidae (cattle, sheep, and goats). The Agency also

provides voluntary inspection to several species of Bovidae not subject to mandatory inspection under the Federal Meat Inspection Act, as well as several species of Cervidae. These species include: reindeer, elk, deer, antelope, water buffalo, and bison.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- Mail, including CD-ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- Hand- or courier-delivered submittals: Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2019-0028. Comments received in response to this docket will be made

available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202)720-5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Acting Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 720-0399.

SUPPLEMENTARY INFORMATION:

Background

Under the Agricultural Marketing Act (AMA; 7 U.S.C. 1622 (h)) and the regulations at 9 CFR part 352, FSIS conducts voluntary inspection of exotic animals, when requested by an establishment. In the regulations at 9 CFR 352.1(k), FSIS defines "exotic animals" to include reindeer, elk, deer, antelope, water buffalo, and bison. Yak is not currently listed in the regulations as an "exotic animal." However, the Agency has been inspecting yak under its voluntary program for several years.

In 2014, FSIS issued a memo rescinding all labels for yak product, because the species was not listed as an "exotic animal" eligible for voluntary inspection. On September 3, 2014,

the International Yak Association (IYAK) submitted a petition for rulemaking, under 9 CFR part 392, requesting that FSIS amend 9 CFR 352.1(k) to include yak under the definition of an "exotic animal." The petition is available on FSIS's website at:

<https://www.fsis.usda.gov/wps/wcm/connect/db2ac10c-7b92-4bb4-a0d3-885641738711/Petition-YAK-112014.pdf?MOD=AJPERES>. The petitioner stated that because FSIS had voluntarily inspected yak for many years, it had created an expectation among breeders and buyers that FSIS would continue to inspect yak. Furthermore, the petitioner argued that withdrawing voluntary inspection services could significantly harm the yak industry. On November 21, 2014, IYAK submitted additional supporting data. IYAK had surveyed United States yak producers and found that continued FSIS inspection of yak meat is critical to the industry as a whole.¹ After reviewing the petition and supporting data, FSIS decided to grant the petition and stated that it would continue to voluntarily inspect yak while FSIS went through rulemaking to add yak to the list of exotic animals eligible for voluntary inspection (<https://www.fsis.usda.gov/wps/wcm/connect/aa5f69d7-ddc6-44bc-9ff3-bc9489fcd338/IYAK-FSIS-response-120314.pdf?MOD=AJPERES> and

<https://www.fsis.usda.gov/wps/wcm/connect/c109452f-4497-4144-815e-6a382b94a113/FSIS-Final-Response-IAK->

¹ IYAK asked that the supporting data remain confidential because it contains proprietary information.

080315.pdf?MOD=AJPERES). At the time, FSIS was unable to predict when it would initiate rulemaking.

Proposed Rule

FSIS is now proposing to amend 9 CFR part 352 to define yak and to add it to the list of exotic animals eligible for voluntary inspection. Under this proposed rule, yak would be defined as a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau. As is noted above, FSIS is currently inspecting yak slaughter and processing under voluntary inspection services. Yak inspection is similar to that of other Bovidae, including cattle.

Request for Public Comment

Over the years, FSIS has received inquiries about its voluntary inspection program from various animal producers and growers. Because of interest from these stakeholders, FSIS is requesting comments as to whether the regulations should be amended to list as eligible for voluntary inspection all farm-raised species in the biological families Cervidae (e.g., moose, all deer and elk), all Bovidae not currently subject to mandatory inspection (e.g., water buffalo and impalas), and Camelidae (e.g., camel, llama, and alpaca).

FSIS provides voluntary inspection of some species in the biological families Bovidae and Cervidae under the AMA.

Currently, all "exotic animals," as defined in the regulations, fall under these two families. The Food and Drug Administration (FDA) currently has jurisdiction over the slaughter and processing of species of the biological family Camelidae, as do some state or local agencies. FSIS does not provide voluntary inspection for any of these species but is requesting comment on this issue because there has been stakeholder interest in FSIS expanding its services to include Camelidae.

Based on interest from stakeholders, FSIS also requests comment as to whether any species in these families, if not currently subject to mandatory inspection, should be. As discussed above, FSIS already requires the inspection of some species of the biological family Bovidae under the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601(w)). These species include cattle, sheep, and goats.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Expected Costs of the Proposed Rule

If this rule is finalized, FSIS does not expect any additional industry or Agency costs because, although yak is not currently listed as an "exotic animal" eligible for voluntary inspection, FSIS has been inspecting yak under the voluntary inspection program for many years.

Expected Benefits of the Proposed Rule

In 2014, IYAK conducted a National Yak Industry Survey to support its petition requesting that FSIS amend 9 CFR 352.1(k) to include Yak under the definition of an "exotic animal." According to IYAK's survey, FSIS voluntarily inspected 109 yaks from 22 establishments in 2014. The IYAK survey also stated that there were 33 total establishments slaughtering yak in 2014. From 2014 to November 8, 2019, 22 unique establishments submitted a total of 70 yak product labels to the FSIS Labeling and Program Delivery Staff (LPDS) for approval.² These establishments would benefit from being able to continue to use

² FSIS used data from the Labeling and Program Delivery Staff's Label Submission and Approval System (LSAS). This data was received on November 7, 2019.

their labels with FSIS's voluntary mark of inspection if this proposed rule is finalized. According to the 2014 IYAK survey, 90 percent of the establishments surveyed noted that USDA inspection is critical to the yak industry. Amending 9 CFR 352.1 to list yak as an "exotic animal" eligible for FSIS's voluntary inspection service would avoid disruption to the yak industry and the possible economic harm to producers if FSIS stopped voluntarily inspecting yak.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would have a significant, but positive, economic impact on a substantial number of small yak entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would allow FSIS to continue to voluntarily inspect yak and there would be no increased costs to industry. About 14 percent of the establishments that submitted yak labels from 2014 to November 8, 2019 were classified as Hazard Analysis and Critical Control Point (HACCP) size small and 86 percent were HACCP size very small.³ The proposed rule would benefit small and very small establishments because it would continue to give these establishments access to the FSIS

³ FSIS used data from the Public Health Information System (PHIS) to identify these establishments by HACCP category. This data was received on November 19, 2019.

voluntary mark of inspection and access to buyers who look for that mark of inspection when making purchasing decisions.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), this proposed rule would expand marketing options for the Yak industry. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Environmental Impact

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4(b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4(b)(6)).

FSIS has determined that this proposed rule, which amends its regulations to define yak and include it among "exotic animals" eligible for voluntary inspection under 9 CFR part 352, would not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an EA or EIS provided under 7 CFR 1b.4 of the U.S. Department of Agriculture regulations.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Congressional Review Act

Pursuant to the Congressional Review Act at 5 U.S.C. 801 *et seq.*, the Office of Information and Regulatory Affairs has determined that this proposed rule is not a "major rule," as defined by 5 U.S.C. 804(2).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Constituent Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at

http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

List of Subjects in 9 CFR Part 352

Exotic animals.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 352 as follows:

PART 352-- EXOTIC ANIMALS AND HORSES: VOLUNTARY INSPECTION

1. The authority citation for part 352 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.53.

2. Amend §352.1 by revising paragraph (k) and adding paragraph (bb) to read as follows:

* * * * *

(k) *Exotic animal* means any reindeer, elk, deer, antelope, water buffalo, bison, or yak.

* * * * *

(bb) *Yak* means a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau.

Done at Washington, DC:

Paul Kiecker,
Administrator.

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